

REMARKS/ ARGUMENTS

This reply and amendment is in response to the Office Action mailed August 1, 2005.

Applicants request that this application be revived. The application was unintentionally abandoned under 37 C.F.R. 1.137(b). A Petition for Revival (form PTO/SB/64) is enclosed herewith, together with the appropriate fee. The entire delay in filing this reply from the due date for the reply until the filing of this petition was unintentional.

Claims 1, 4, 6, 9, 15, 17, 18, 23, 26, 28, 31, 37, 39 and 40 are currently pending in this application. Please cancel claims 9 and 31. Claims 1, 15, 17, 18, 23, 37, 39 and 40 are amended herein to further clarify the invention.

The Examiner is thanked for withdrawing the previous rejection of the claims made under 35 U.S.C. 101.

On page 2 of the Action, the claims were rejected under 35 U.S.C. 112, second paragraph, as allegedly being indefinite because applicant has not provided a range of values for the term "minimally-polluting." Applicant has now amended claims 1 and 23 to change "minimally-polluting" to "non-fossil-fuel-burning."

On page 3 of the Action, claims 1, 4, 6, 15, 28 and 37 were rejected under 35 U.S.C. 103(a) as being unpatentable over a triple combination of patents, namely Smith et al. U.S. Patent No. 6,785,592, Walker et al. U.S. Patent No. 6,466,919, and Ishimaru et al. U.S. Patent No. 5,432,710. Applicant respectfully disagrees, and submits that none

of these references, whether taken singly or in combination, disclose or suggest the unique combination of elements disclosed and claimed in the present application, as amended herein. Nor would a person of ordinary skill in the pertinent art be motivated to combine the references to produce the present invention.

The Smith patent is not relevant because that patent discusses only the demand for and usage of raw energy itself, not the demand for energy generating equipment, as the present invention does. In other words, Smith is talking only about raw energy itself, not the equipment used to generate the energy. See Smith Abstract and column 2, lines 10-32. Nor does Smith discuss the selection, configuration or installation of any equipment.

By contrast, the present invention facilitates the selection, purchase, configuration and installation of minimally-polluting (non-fossil-fuel-burning) equipment on a bulk basis, not raw energy itself, to obtain volume pricing discounts for customers. See, for example, paragraphs [0021] and [0069] - [0073] and Figure 1 of the published application, Pub. No. 2002/0040356.

Regarding the Walker patent, the system described in that patent is characterized as a "buyer-driven" system. In other words, a buyer dictates terms of an offer, such as through a request for proposal (RFP). (See column 1, lines 24-42, column 2, lines 43-48 and column 3, lines 38-49.) Walker then aggregates "conditional purchase orders (CPOs)" to create an "aggregate CPO" that is offered to a seller. The CPOs are aggregated after the individual buyers have determined their needs and prices. The seller then decides whether or not to accept the offer. (See column 2, lines 55-64.)

By contrast, the system of the present invention is not buyer-driven. In the system of the present invention, the buyer does not submit an RFP to an equipment seller. Instead, a centrally- managed energy consulting system acts as an automated intermediary “deal designer.” The consulting system builds a database of available equipment and pricing, allows potential customers to enter their own energy usage and site data, designs an energy generation system for one or more customers, selects equipment, creates and prices a deal for each customer such that the cost is less than their current cost of electricity, creates an aggregate purchase or other acquisition order of sorts to obtain one or more volume discounts, submits the order to one or more sellers, purchases or otherwise acquires equipment, and then configures and arranges for the installation of the equipment. The system itself sets the price or prices, not the buyer, the price(s) being based on aggregated usage data, site data, equipment cost data and the regulatory framework.

Unlike Walker, the present system is primarily intended for use by relatively small customers, such as private homeowners, to design, purchase (or otherwise acquire), and install distributed energy generation equipment. That is what an energy specifier or consultant does, not a “broker” as in Walker. Also, in Walker, there is no coordinated integration of equipment if different pieces of equipment are purchased from different sellers. With respect to the energy systems discussed in the present invention, the fuel cells, photovoltaics, wind turbines, inverters, and roof mounts would each come from a different manufacturer or seller.

As an intermediary deal designer or consultant, the system of the present invention creates new markets where none existed previously because small customers typically are not willing to buy energy generation equipment at prices sellers can afford to offer. The present system affirmatively drives down the total price to the buyers, while accepting the conditions and prices on the sale of equipment put forth by the sellers.

In addition, the system of the present invention does not "match" a buyer with a seller over conditions and price of a good or service. Rather, the system crafts a way to provide the buyer with something he already has (electric service) for a lower price and at the same time provide an important benefit to society -- a reduction in pollution and global warming, and assistance in reducing the dependence of the United States upon foreign oil. The system also provides a service to the sellers, in creating new markets for their goods and services. The system does not "broker" either goods or services as an agent for either buyer or seller, as in Walker. Rather, it directly provides a service to the buyer, directly provides goods to the buyer, directly provides a service to the seller, and directly purchases equipment components from the seller.

Unlike the Walker system, the present system does not receive a conditional purchase order or contract to initiate a relationship with a buyer. A step somewhat similar to this occurs, but only toward the end of the process (see step (j) of amended claim 1), not near the beginning of the process, as is done in the Walker system.

Nor does the present system need to receive any "payment identifier," "conditions" or prices from any customer. The customer does not need to provide a price, and does not need to provide any conditions. The customer initially would not even know what the

price would be or what conditions would be necessary. Part of the benefit of the present system is that it figures out the prices and conditions for the customers. The customers only need to agree or not agree to the final contract the consulting service offers to them.

Also, unlike Walker, the present system does not "compare" individual purchase offers to one or more "predefined rules" from a potential seller as a "broker." Instead, it creates an offer, tailored specifically to the buyer, sends it to the buyer based on what is available from sellers and what is appropriate for the buyer based on his or her individual energy needs, and what the system calculates in advance will be the price achievable at the expected volume levels, and creates a way to aggregate buyer needs so as to meet seller criteria and achieve viable prices. In other words, this system determines what the buyer needs and what the seller has available, rather than merely asking the buyer what it wants and is willing to pay or accept by way of conditions or price. If the buyer accepts a proposed energy equipment "deal," the buyer makes payment to the operator of the consulting system, not to the seller of the equipment, as in Walker.

The system and method of the present invention is somewhat analogous to a computer systems integrator, who buys components from different sellers, assembles the components into a finished computer, and then sells or leases it to a customer based on the specifications of the customer. This is quite different from the Walker system, which merely uses brokers to connect a seller with a buyer who happens to agree on price and conditions.

Energy specifiers and consultants, who integrate components from different sellers, do exist today, but the market is currently very small because the price of

electricity produced locally by a non-fossil-fuel-burning system currently is almost always far more expensive than buying electricity from the local utility. But with the system and method of the present invention, new markets can be created in which the electricity from cleaner energy systems is less expensive than utility-generated energy.

In addition, the “aggregation” step performed in the present invention is completely unlike the aggregation step performed in the Walker system. Walker aggregates “conditional purchase orders.” (See Abstract and Summary of the Invention sections of Walker.) Each purchase order is between a customer and a seller, unlike the present invention in which each equipment acquisition contract is between the customer and the central consulting system (or owner of the system), or between the seller and the consulting system or owner. This allows the consulting system to design “deals” in which different necessary components are purchased from different sellers, which would not be possible under Walker. It also allows the “mixing” of goods and services as is necessary in energy generation specification, but this would not be possible under Walker.

The present system aggregates energy equipment demand before any equipment needs to be purchased or an energy consultant or specifier visits a customer’s site. In other words, the need for a consultant or specifier is “time-shifted” to a point in the future at which equipment demand has been aggregated through contingent purchase or other acquisition contracts or commitments, which operate like a blend of options and futures or forward contracts. In this way, unlike Walker, substantial cost savings are achieved and, in fact, an entirely new market for minimally-polluting (non-fossil-fuel-burning) energy generation equipment is created.

The Ishimaru patent cited by the Examiner relates to a system designed to “allow power companies and town gas companies to make effective use of their respective facilities.” (col. 1, lines 42 - 45) That patent is designed for large utilities and large companies generating their own power rather than for typical energy consumers, such as homeowners. Only large power generation companies and very large industrial companies that generate their own energy supply would be able to use the invention described in Ishimaru et al. Only such large energy generators would typically have the capacity, knowledge and financial ability to build or buy, and use the cogeneration systems described in Ishimaru et al. (col. 1, lines 46 - 61).

In addition, Ishimaru does not disclose or suggest an intermediary system or method for facilitating acquisition of equipment. Rather, the patent relates to the adjustment of existing equipment already in use. By contrast, the present invention is primarily designed to facilitate the acquisition of equipment not yet being used by the customer.

It is well-known that typical residential and even the vast majority of commercial and industrial energy consumers do not possess the financial or technical resources to install cogeneration equipment – only large, sophisticated companies do. The Ishimaru system, while not saying so explicitly, only makes sense for such extremely large energy generators. It does not relate to small or residential customers of a power utility, which might generate a small amount of electricity for its own needs.

By contrast, the present invention is applicable to virtually all energy consumers, including residential end-users with no training or knowledge concerning the workings of

electricity or power generation. Demand aggregation assists in accomplishing this goal. Ishimaru does not mention demand aggregation at all.

To the extent that Ishimaru discusses the consumption of energy, it is primarily discussing the primary energy consumed by the power plant, utility or very large industrial consumer in order to power the equipment needed to generate electricity and heat. For that reason, when Ishimaru discusses "the consumption of primary energy" it refers only to facilities at a "power plant" (col. 3, lines 52 - 56). That is also why the "primary energy" includes fossil fuels as well as atomic energy and hydroelectric power (col. 4, lines 21 – 24; col. 4, lines 30 - 34).

It is well known that typical residential, commercial and industrial energy users cannot operate nuclear power plants and typically do not divert rivers or dam water in order to generate the electricity they need. That is also why Ishimaru mentions that "Primary energy consumption at a hydropower generating plant normally is negligible." (col. 4 lines 34 - 35) That would not be relevant if the users of the disclosed technology were end-users or typical residential, commercial or industrial electricity customers.

That is also why, even when discussing fuel cells, Ishimaru discusses an "approximately 200 kw" fuel cell and its efficiency as compared with the efficiency of the rest of the power plant. (col. 5, lines 42 - 47) That is also why Ishimaru discloses that "it is more economical to receive a hydrocarbon fuel (e.g. methane, propane or butane) at the fuel receiving means, and produce hydrogen gas therefrom at a reformer means to be used as the fuel for the fuel cell means." (col. 6, lines 58 - 63) It is well-known that only power utilities and extremely large industrial generators of energy could operate both

the reformer as well as the fuel cell, or would need to use 200 kw fuel cells, which are extremely large.

Given the fact that Ishimaru et al. makes no mention of demand aggregation, and given the entirely different contexts and purposes of the present invention and that disclosed by Ishimaru, that reference, whether singly or in combination with other references, in no way discloses or suggests that any aspect of the present invention is obvious, or that a person of ordinary skill in the art would be motivated to combine Ishimaru with Smith and/or Walker to produce the present invention.

On page 5 of the Office Action, and with respect to claims 9 and 31, the Examiner cites Ardalan et al. U.S. Patent No. 6,396,839. Claims 9 and 31 have been canceled. Also, that patent is not relevant to any claims because it discusses only automatic meter reading systems. The present invention is entirely independent of, and could be used with or without, an automatic meter reading system. Also, only after a customer has granted permission to a company to obtain its meter data and granted access to the meter in order to set up an automatic meter reading system, would the Ardalan system be relevant. By contrast, the present invention deals with the point in time before a customer has granted a company permission to access its meter.

With respect to dependent claims 17, 18, 39 and 40, which relate to lobbying activities, the Examiner has cited a publication entitled "Building an international plastics base in Spain," by Marco Achon. Although that article does mention the phrase "lobbying for reduced energy costs" on page 2, that article does not disclose or suggest several unique features of claims 17, 18, 39 or 40, namely the organization of customers by

automatically inviting them to participate in lobbying activities, and coordinating such activities, for the purpose of persuading governments to enact legislation to require a local utility to buy back electricity from customers at the retail rate if the customers are generating electricity using non-polluting or minimally polluting equipment.

The present invention is also not obvious in light of some of the “secondary considerations” identified by the U.S. Supreme Court in *Graham v. John Deere*, 383 US 1, 148 USPQ 459 (1966), in particular, long felt but unsolved needs and the failure of others. Applicant submits that there is a critical, almost desperate, need today for the system described in the present application, namely the need for widespread, affordable, non-polluting or minimally-polluting energy generation systems based on technologies other than fossil fuels such as oil, gas or coal. This need is becoming more critical with each passing year. It is now almost universally agreed that the United States is far too dependent on foreign oil, particularly in light of recent events in the Middle East and recent increases in the price of oil. In addition, it is well known that pollution and carbon dioxide levels need to be reduced not only for health reasons but also to reduce global warming.

The critical need for alternative energy resources has already been recognized by the U.S. Patent and Trademark Office itself because energy-related applications are automatically entitled to “special” examination status upon the filing of a Petition to Make Special. MPEP 708.02(VI). To date, these critical energy needs have not been met in a manner that is readily available and affordable. The present invention addresses these needs directly.

Therefore, in light of the amendments to the claims herein and the discussion above, applicant submits that all of the Examiner's rejections under 35 USC 103 and 112 have been overcome. Thus, it is submitted that all claims, as amended herein, are now allowable. Accordingly, applicants respectfully request that a timely Notice of Allowance be issued in this case.

If there are still unresolved issues requiring adverse action, it is requested that the Examiner contact applicant's attorney so that appropriate arrangements can be made for discussing and perhaps resolving the same. An interview was previously requested, but applicant did not hear from the Examiner. It is believed that a telephone discussion would be very helpful at this time if any issues remain.

Respectfully submitted,

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